

EDUCATION DEPARTMENT [281]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 31, "Competent Private Instruction and Dual Enrollment," Iowa Administrative Code.

No changes have been made to this chapter since 1996. With input from members of the Network of Iowa Christian Home Educators (NICHE), the Department undertook a thorough review of these rules. Key substantive changes include the following:

- Subrule 31.2(1) is amended to provide a date certain by which the mandatory reports of competent private instruction (CPI) must be filed. Iowa Code section 299.4 requires that the reports be filed with the resident districts "by the earliest starting date specified in section 279.10, subsection 1." That provision states that the first day of school is to be "no sooner than a day during the calendar week in which the first day of September falls," the earliest date of which is August 26.
- Rule 281—31.3(299) and new rule 281—31.4(299, 299A) now differentiate between the duties of supervising teachers who are privately retained by families that provide CPI and the duties of supervising teachers who are hired by a school district that provides a home school assistance program. The biggest difference is in regard to licensing requirements. Iowa Code section 299A.2 requires that teachers who provide instruction or instructional supervision for a child receiving CPI shall possess a license or certificate from the Iowa Board of Educational Examiners which is "appropriate to the ages and grade levels of the children to be taught." Because public funds are used to pay for the teachers hired by a district through a home school assistance program, the Department finds that it is reasonable to require that those teachers who provide direct instruction also possess a valid endorsement as to content area if the child receives credit on a transcript provided by the district for the course. However, the Department also finds that it is reasonable to rule that CPI may not be provided by a teacher who possesses only a substitute authorization (for which the holder does not complete an approved teacher education program and which limits the holder to teaching children solely at grade levels in middle school, junior high, or high school, and for no more than five consecutive days in one job assignment), unless such teacher is the parent, guardian, or legal or actual custodian of the child for whom CPI is provided.
- Subrule 31.5(4) emphasizes the prohibition against school districts providing public funds and other resources to unlawfully benefit a child who receives CPI, with the exception of texts and supplementary materials already on hand and appropriate for use by regularly enrolled students of the district.
- Subrule 31.5(5) reflects the requirement in 2008 Iowa Acts, House File 2700, section 110, that the enrollment of each child in a home school assistance program be documented and submitted to the Department on a form provided by the Department.
- Subrule 31.6(2) codifies a long-standing appeal decision of the Department that a child under dual enrollment must receive at least one-quarter of the child's instruction by way of CPI (and no more than three-quarters by way of the district's academic programs).
- Rules 281—31.8(299A) and 281—31.9(299A) include the following changes:
 - Clarification that one option for compliance with the annual assessment requirement for a child who receives CPI is enrollment in a correspondence school accredited by an accrediting agency approved by the federal Department of Education;

- Deletion of a listing of acceptable standardized testing in favor of a list updated annually by the Department and posted on the Department's Web site;
- Clarification about the responsibility for submitting assessment results to the district of residence; and
- Updating of portfolio evaluator credentials to be consistent with changes made by the Board of Educational Examiners.
- Rule 281—31.10(299A) is amended to conform to changes in federal regulations related to the Individuals with Disabilities Education Act (IDEA) permitting a parent to deny consent for an evaluation of the parent's child for IDEA purposes.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before October 28, 2008, at 4:30 p.m. Comments on the proposed amendments should be directed to Carol Greta, Office of the Director, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; E-mail carol.greta@iowa.gov; or fax (515)281-4122.

A public hearing will be held on October 28, 2008, from 1:30 to 3 p.m. at the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of their specific needs by calling (515)281-3436.

These amendments are intended to implement Iowa Code chapters 299 and 299A and 2008 Iowa Acts, House File 2700, sections 108 to 111.

The following amendments are proposed.

Item 1. Strike “parent, guardian, or legal custodian” wherever it appears in **281—Chapter 31** and insert “parent, guardian, or legal or actual custodian” in lieu thereof.

Item 2. Amend rule **281—31.1(299)** as follows:
281—31.1(299, 299A) Purpose. It is the purpose of this chapter to give guidance to parents, guardians, and custodians, school boards, and teachers providing or assisting and supervising concerning the provision, assistance, and supervision of competent private instruction to children of compulsory attendance age outside the traditional school setting. This chapter also ~~proposes to establish~~ establishes responsibilities related to dual enrollment.

Item 3. Amend rule **281—31.2(299)** as follows:
281—31.2(299) Reports as to competent private instruction.
31.2(1) Reporting. The parent, guardian, or legal or actual custodian of a child of compulsory attendance age who does not enroll the child in a public school or Iowa accredited nonpublic school shall complete a report in duplicate on forms created by the department of education and provided by the resident public school district, indicating the parent, guardian, or legal or actual custodian's intent to provide or arrange for competent private instruction for the child for each school year. The report shall be filed with the school board secretary by ~~the first day of school in the resident district~~ August 26, except as otherwise provided by these rules.

- a. The report shall include the following information:
 - (1) to (6) No change.
 - (7) Evidence of immunization of the child or evidence of exemption, as required by law, if the child is being placed under competent private instruction for the first time.
- b. No change.

31.2(2) Late reporting. If a parent, guardian, or legal or actual custodian decides, after enrolling a child of compulsory attendance age in a public or accredited nonpublic school and after the deadline for filing a report under subrule 31.2(1), ~~that the parent wishes to provide competent private instruction to the child, the parent, guardian, or legal or actual custodian shall file the report required~~ report completed as fully as possible no later than 14 calendar days and a fully completed report within 30 calendar days after removing the child from the public or accredited nonpublic school. Days of the child's attendance in the public or nonpublic school up to the time of removal shall be applied to the 148-day minimum compulsory attendance requirement for the school year affected.

Item 4. Amend rule **281—31.3(299)** as follows:

281—31.3(299,299A) Duties of privately retained licensed practitioners.

31.3(1) Scope of rule. This rule addresses the duties of a person who is directly retained by the parent, guardian, or legal or actual custodian of a child receiving competent private instruction to provide instruction or instructional supervision for the child. The duties of a person who provides instruction or instructional supervision on behalf of a public school in the form of a home school assistance program are addressed in rule 281—31.4(299,299A).

~~31.3(1)~~ **31.3(2) Licensing requirements.** A person who provides instruction to or instructional supervision of a student receiving competent private instruction shall be either the student's parent, guardian, or legal or actual custodian or a person who possesses a valid Iowa teaching certificate or practitioner license which is appropriate to the ~~age and~~ grade level of the student ~~under competent private instruction~~. A person who possesses a valid Iowa substitute teacher's license is qualified to supervise the instruction of a child who receives competent private instruction. A person who possesses only a valid Iowa substitute authorization is not qualified to supervise the instruction of a child who receives competent private instruction.

~~31.3(2)~~ **31.3(3) Duties.** The duties of a ~~certificated or~~ licensed teacher practitioner who instructs or provides instructional supervision of a student shall include the following:

a. Contact with the student and the student's parent, guardian, or legal or actual custodian at least twice per 45 days of instruction, during which time the teacher practitioner fulfills the duties described below. One of every two contacts shall be face-to-face with the student ~~under competent private instruction~~.

~~However, if the instruction or instructional supervision is provided by a public or accredited nonpublic school in the form of a home school assistance program, the teacher practitioner shall have contact with the child and the child's parent, guardian, or legal custodian at least four times per quarter during the period of instruction. One of every two contacts shall be face-to-face with the student under competent private instruction.~~

b. Consulting with and advising the student's parent, guardian, or legal or actual custodian with respect to the following during the course of the year's visits: as requested by the student's parent, guardian, or legal or actual custodian or as deemed necessary in the professional judgment of the practitioner.

- (1) Lesson plans;
- (2) Textbook and supplementary materials;
- (3) Setting educational goals and objectives;
- (4) Teaching and learning techniques;
- (5) Forms of assessment and evaluation of student learning;
- (6) Diagnosing student strengths and weaknesses;
- (7) Interpretation of test results;
- (8) Planning;
- (9) Record keeping; and
- (10) ~~Other duties as requested or agreed upon.~~

c. Providing formal and informal assessments of the student's progress to the student and the student's parent, guardian, or legal or actual custodian.

d. and e. No change.

~~31.3(3)~~ **31.3(4) Limitations.** A licensed Iowa practitioner who is employed ~~or agrees to provide instruction or instructional supervision of programs of competent private instruction under this rule~~ shall not serve in that capacity on behalf of more than 25 families, or more than 50

children of compulsory attendance age, in an academic year unless the service is provided pursuant to the teacher's employment with a nonaccredited nonpublic school entity.

~~A licensed Iowa practitioner who is employed by a public or accredited nonpublic school to provide instruction or instructional supervision through a home school assistance program, as defined in subrule 31.4(5), shall not serve in that capacity on behalf of more than 20 families, or more than 40 children of compulsory attendance age, in an academic year.~~

~~A licensed practitioner or authorities in charge of a public or accredited private school may seek exemption from the above limitation by submitting a written request to the director of the department of education. Exemptions shall be granted when the director is satisfied that the limitation will pose a substantial hardship on the person or the school providing instruction or instructional supervision, and that the best interests of all children being served by the practitioner or school will continue to be met.~~

Item 5. Renumber rules **281—31.4(299A)** to **281—31.9(299A)** as **281—31.5(299A)** to **281—31.10(299A)**.

Item 6. Adopt the following new rule 281—31.4(299,299A):

281—31.4(299,299A) Duties of licensed practitioners, home school assistance program.

31.4(1) Scope of rule. This rule addresses the duties of a person who provides competent private instruction or instructional supervision for one or more children who receive competent private instruction on behalf of a school district in the form of a home school assistance program as defined in subrule 31.5(5).

31.4(2) Licensing requirements. A person who provides direct instruction to a student receiving competent private instruction for which the student receives credit on a transcript provided by the district for the course shall possess a valid Iowa teaching certificate or practitioner license appropriate to the content area taught and to the grade level of the student. A person who provides instructional supervision only of a student receiving competent private instruction shall possess a valid Iowa teaching certificate or practitioner license appropriate to the grade level of the student. A practitioner who possesses only a valid Iowa substitute authorization may neither provide direct instruction nor instructional supervision under this rule.

31.4(3) Duties. The duties of a licensed teacher who instructs or provides instructional supervision of a student shall include the following:

a. Contact with the student and the student's parent, guardian, or legal or actual custodian at least four times per 45 days of instruction. One of every two contacts shall be face-to-face with the student.

b. Consulting with and advising the student's parent, guardian, or legal or actual custodian with respect to the following during the course of the year's visits:

- (1) Lesson plans;
- (2) Textbook and supplementary materials;
- (3) Educational goals and objectives;
- (4) Teaching and learning techniques;
- (5) Forms of assessment and evaluation of student learning;
- (6) The student's strengths and weaknesses;
- (7) Interpretation of test results;
- (8) Planning;
- (9) Record keeping; and
- (10) Other duties as requested or agreed upon.

c. Providing formal and informal assessments of the student's progress to the student and the student's parent, guardian, or legal or actual custodian.

d. Annually maintaining a diary, record, or log of visitations and assistance provided.

e. For purposes of assisting the district to meet its "child find" obligation under the Individuals with Disabilities Education Act, referring to the child's district of residence for evaluation any child who the practitioner has reason to believe may be in need of special education.

31.4(4) Limitations. A licensed Iowa practitioner who is employed by a public or accredited nonpublic school to provide instruction or instructional supervision through a home school assistance program shall not serve in that capacity on behalf of more than 20 families, or more

than 40 children of compulsory attendance age, in an academic year. The authorities in charge of a public school may seek exemption from the above limitation by submitting a written request to the director of the department of education. Exemptions shall be granted when the director is satisfied that the limitation will pose a substantial hardship on the person or the school providing instruction or instructional supervision and that the best interests of all children being served by the home school assistance program will continue to be met.

Item 7. Amend renumbered rule **281—31.5(299A)** as follows:

281—31.5(299A) School district duties related to competent private instruction.

31.5(1) Reports.

a. to c. No change.

d. The district shall annually report to the department of education by ~~April 1 the names of all resident children who are subject to an annual assessment and what form of assessment has been chosen by the child's parent, guardian, or legal custodian. The district shall cooperate with the department in gathering standardized test reports or portfolio evaluation reports for each child subject to annual assessment.~~ June 30 the names of all resident children who are subject to an annual assessment and who either failed to make adequate progress or whose parent, guardian, or legal or actual custodian failed to comply with the assessment requirements of the compulsory attendance law.

e. and f. No change.

31.5(2) Testing assistance.

a. If a child is under dual enrollment, ~~the district shall administer standardized tests, when and the standardized test option has been selected by the child's parent, guardian, or legal or actual custodian, the district shall administer the standardized test to the child, or may delegate the test administration to the appropriate area education agency, or allow the child's parent, guardian, or legal or actual custodian to procure standardized testing through an accredited nonpublic school.~~ If the child is under dual enrollment, no fee is charged to the parent, guardian, or legal or actual custodian.

b. No change.

c. If a student has been administered an approved standardized test by ~~a an accredited nonpublic school during the academic school year for which testing is required; and the administration of the test has met the terms or protocol of the test publisher, the results a copy of the test result report, from which test results not required under law may be redacted, may be submitted to the resident district and the department of education in original form by either the test administrator or the parent, guardian, or legal or actual custodian of the child being tested, in satisfaction of the annual assessment option. The submitted test results shall be accompanied by a certification statement signed by the test administrator to the effect that the publisher's protocol or terms required for test administration have been met. For purposes of this rule, "accredited nonpublic school" includes correspondence and other schools accredited by an accrediting agency approved by the federal Department of Education.~~ an accredited nonpublic school during the academic school year for which testing is required; and the administration of the test has met the terms or protocol of the test publisher, the results a copy of the test result report, from which test results not required under law may be redacted, may be submitted to the resident district and the department of education in original form by either the test administrator or the parent, guardian, or legal or actual custodian of the child being tested, in satisfaction of the annual assessment option. The submitted test results shall be accompanied by a certification statement signed by the test administrator to the effect that the publisher's protocol or terms required for test administration have been met. For purposes of this rule, "accredited nonpublic school" includes correspondence and other schools accredited by an accrediting agency approved by the federal Department of Education.

~~d. The district shall maintain as any other confidential education record the standardized testing results for each resident child for whom the district or area education agency administers the test.~~

31.5(3) No change.

31.5(4) Provision of instructional materials.

a. A public school district ~~may shall~~ not make monetary payments, including cash and cash equivalents, directly or indirectly to the parent, guardian, or legal or actual custodian or to a child receiving competent private instruction. A school district shall not provide texts or supplementary materials for or on behalf of a child receiving competent private instruction if such texts or supplementary materials are not provided to regularly enrolled students of the school district.

b. A district may provide to children receiving competent private instruction available texts or supplementary materials on the same basis as they are provided to enrolled students; and shall provide available texts or supplemental instructional materials on the same basis as they are provided to enrolled students when a child is under dual enrollment or in a home school assistance program. For purposes of this paragraph, "available" means surplus texts or supplementary materials that were acquired by the district for regularly enrolled students; a

district shall not purchase texts or supplementary materials to be used solely by one or more children who receive competent private instruction. If a fee, such as a textbook or towel rental fee, is charged to regularly enrolled students for participation in a class or extracurricular activity, that fee may also be charged to dual-enrolled students on the same basis as it is charged to enrolled students, but only for the specific class or extracurricular activity ~~taken~~.

c. No change.

31.5(5) Home school assistance programs. A school district or accredited nonpublic school may offer an assistance program for parents, guardians, or legal or actual custodians providing private instruction to a child of compulsory attendance age. ~~A parent, guardian, or legal custodian of a child of compulsory attendance age may enroll the child in a home school or private instruction assistance program in a school district or accredited nonpublic school.~~ A district or accredited nonpublic school may impose additional requirements upon children enrolled in its home school assistance program.

A parent, guardian, or legal or actual custodian seeking to enroll a child in a home school assistance program in a school district or accredited nonpublic school must file the report of competent private instruction pursuant to subrule 31.2(1). Each district and accredited nonpublic school that operates a home school assistance program shall file with the department by November 1 of each year a list of all children enrolled in the district's or school's home school assistance program on a form provided by the department.

An assistance program offered by a school district or accredited nonpublic school shall, at a minimum, meet state licensure standards for accredited school personnel in designating a practitioner to provide instruction or instructional supervision ~~of for~~ a competent private instruction program, including special education instruction, and shall meet the applicable provisions of rule ~~31.3(299) 281—31.4(299,299A).~~ All district personnel who provide or supervise instruction to children enrolled in the district's home school assistance program shall be appropriately licensed to the grade levels of the children instructed. A district shall not employ as a home school assistance program instructor a person who currently holds only a substitute authorization issued pursuant to rule 282—14.143(272). ~~The district may impose additional requirements upon children enrolled in its home school assistance program.~~

A home school assistance program is not dual enrollment, but the parent, guardian, or legal or actual custodian of a child enrolled in a home school assistance program may request dual enrollment in addition to enrollment in a home school assistance program.

Item 8. Amend renumbered rule **281—31.6(299A)** as follows:
281—31.6(299A) Dual enrollment.

31.6(1) ~~The parent, guardian, or legal or actual custodian of a child of compulsory attendance age who is receiving competent private instruction may enroll the child in the public school district of residence of the child under dual enrollment. The parent, guardian, or legal or actual custodian desiring dual enrollment shall notify the district of residence of the child not later than September 15 of the school year for which dual enrollment is sought.~~

31.6(2) A child under dual enrollment may participate in academic or instructional programs of the district on the same basis as any regularly enrolled student. A child under dual enrollment also is eligible to enroll in courses that offer secondary and postsecondary credit on the same basis as any regularly enrolled student. A child under dual enrollment must receive at least one-quarter of the child's instruction by way of competent private instruction and no more than three-quarters by way of the district's academic programs.

31.6(3) A child under dual enrollment may participate in any extracurricular activity offered by the district on the same basis as regularly enrolled students. If a child under dual enrollment was under competent private instruction the previous semester, the provisions of 281—subrule 36.15(2), paragraph “c,” shall not apply. However, other rules and policies of the state and district related to eligibility for extracurricular activities shall apply to the child. If a student seeking dual enrollment is enrolled in a nonaccredited nonpublic ~~school~~ entity that is an “associate member” of the Iowa Girls High School Athletic Union or Iowa High School Athletic Association the student is eligible and may participate in interscholastic athletic competition only for the associate member ~~school~~ or a school with which the associate member ~~school~~ is in a cooperative sharing program as outlined in rule 281—36.20(280).

31.6(4) and **31.6(5)** No change.

Item 9. Amend renumbered rule **281—31.7(299)** as follows:

281—31.7(299) Open enrollment.

31.7(1) The parent, guardian, or legal or actual custodian of a child receiving competent private instruction may request open enrollment to another ~~public~~ school district by following the procedures of the open enrollment law, Iowa Code section 282.18.

31.7(2) No change.

31.7(3) In the event that the parent, guardian, or legal or actual custodian of ~~a nonresident an~~ open enrollment student ~~under private instruction~~ fails to comply with state law and these rules ~~related to competent private instruction~~, the receiving district shall notify the secretary of the school district ~~of residence of the child's parent~~ regarding the noncompliance.

Item 10. Amend renumbered rule **281—31.8(299A)**, catchwords, as follows:

281—31.8(299A) Baseline testing evaluation and annual assessment.

Item 11. Amend renumbered subrule **31.8(1)** as follows:

31.8(1) *When required.* When a parent, guardian, or legal or actual custodian of a child ~~of compulsory attendance age who is at least seven years old by September 15~~ provides private instruction to a child without the assistance or supervision of a validly licensed Iowa practitioner as required by law and these rules, and the parent, guardian, or legal or actual custodian does not hold a valid Iowa practitioner license ~~appropriate to the ages and grade levels of the child under competent private instruction~~, the child is subject to initial baseline testing evaluation and an annual evaluation assessment.

~~For the 1992–93 school year and thereafter, a~~ A child who is at least seven years old by September 15, and who begins a program of competent private instruction and is subject to the annual assessment requirement, shall be administered a baseline test evaluation for the purposes of obtaining educational data. The baseline test evaluation and annual assessment shall be taken by ~~June 30, 1993, for programs of competent private instruction begun in school years 1991–92 and 1992–93, and shall be taken by May 1 in ensuing school years.~~ Any test listed in subrule 31.7(2) may be used to fulfill the baseline test requirement, ~~provided that the copyright date of the test publisher's published national norms that are used for the test results being reported is within eight years of the school year in which the test is administered.~~

The parent, guardian, or legal or actual custodian may select ~~either~~ standardized testing, ~~or~~ portfolio assessment, ~~or~~ submittal of a report card from an accredited correspondence school for purposes of fulfilling the baseline evaluation and annual evaluation requirement assessment requirements of the law.

Item 12. Rescind renumbered subrules 31.8(2) to 31.8(4) and adopt the following new subrules in lieu thereof:

31.8(2) Standardized testing.

a. A child's parent, guardian, or legal or actual custodian who chooses standardized testing for the purpose of fulfilling the assessment requirements of the law shall select an instrument approved by the department. The department shall publish an approved list of standardized testing instruments each year. In the event that the parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement wishes to have the child take a standardized test not included on the department's published list, the parent, guardian, or legal or actual custodian shall request permission of the director of the department of education to use a different test. The decision of the director shall be final. Braille or large print editions of any approved test shall be made available for vision-impaired children. Testing norms are available for vision- and hearing-impaired children.

b. A child subject to the annual assessment requirement who takes a standardized test shall take a grade level form of the test that corresponds most closely to the child's chronological age unless permission is granted by the test administrator to take another grade level form of the test. When a parent, guardian, or legal or actual custodian requests another form of the test, the test administrator shall make a decision based upon the following:

- (1) A review of the instructional materials used by the child in the education program;
- (2) The results of curriculum-based measurement techniques including the administering of probes; and

- (3) A review of current samples of the child's work product.

The decision of the test administrator as to the appropriate grade level form of the standardized test to be taken shall be final.

A child whose educational program and instructional materials are designed for students in grades 1 through 5 shall, at a minimum, be tested in the areas of reading, language, and mathematics. A child whose educational program and instructional materials are designed for students in grades 6 through 12 shall, at a minimum, be tested in the areas of reading or literary materials, language or written expression, mathematics or quantitative thinking, science, and social studies.

If retesting is desired, a different form of the same test or a different test shall be administered to the child sufficiently in advance to allow for processing of the test results prior to the first day of classes of the succeeding school year of the resident school district.

c. Testing times and sites.

(1) Standardized test results are normed against a population taking the same test at approximately the same time of year. Norms for the tests exist for fall, winter, and spring. Because the annual assessment is used, in part, to determine whether the child has made at least six months' progress since the previous test, standardized tests used for determining whether adequate progress has been achieved shall be taken annually at approximately the same time each year.

(2) The school district of residence of the child shall annually, by October 1, send notification of the following to the parent, guardian, or legal or actual custodian who has selected standardized:

1. The times and dates when standardized tests will be administered by the school district and the area education agency over the school year, including all testing times and that a school district or area education agency will administer standardized tests at the child's home when so requested;
2. A data sheet showing the costs associated with the tests offered by the school district and area education agency; and
3. A reply form which the parent, guardian, or legal or actual custodian shall complete to indicate the date, location, and test selected, including the grade level form of the test; whether the parent, guardian, or legal or actual custodian wishes to be present for testing; and any special requests such as Braille or large print forms of the test.

d. Unless the child is under dual enrollment, the parent, guardian, or legal or actual custodian who has selected the standardized testing option shall timely reimburse the school district for the cost of testing the child.

31.8(3) Portfolio assessment or evaluation. A parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement may arrange to have an appropriately licensed Iowa practitioner review a portfolio of evidence of the child's progress annually by May 1, subject to the following requirements:

a. Portfolio evaluator. A single evaluator shall be designated by the parent, guardian, or legal or actual custodian who has selected the portfolio evaluation option for annual assessment. The evaluator so identified shall be approved by the superintendent of the local school district or the superintendent's designee, and shall hold a valid Iowa practitioner license or teacher certificate appropriate to the ages and grade levels of the children whose portfolios are being assessed.

A portfolio evaluator who holds an elementary classroom endorsement may assess children in grades 1 through 6. A portfolio evaluator who holds an elementary content endorsement may assess children in grades 1 through 8. A portfolio evaluator who holds a secondary content endorsement may assess children in grades 5 through 12.

A portfolio evaluator shall not evaluate the portfolios of more than 25 students per year without permission of the director of the department of education.

b. Contents of portfolio. The child's portfolio shall contain evidence of academic progress in the minimum curriculum areas of reading, language arts, and mathematics if the child is in grade 1 through 5. For children in grades 6 through 12, the portfolio shall contain evidence in the minimum curriculum areas of reading, language arts, mathematics, science, and social studies.

For each curriculum area, the portfolio shall include a book of lesson plans, a diary, or other written record indicating the subject matter taught and activities in which the child has been engaged, and an outline of the curriculum used by the child. The portfolio may also include a list of, a reference to, or material from the textbooks and resource materials used by the child in each subject area.

The portfolio shall also include copies of any tests or other formal and informal assessment instruments used to measure student progress over the current academic year, a copy of the baseline evaluation, and the most recent assessment report of the student's annual progress.

For each subject area to be evaluated, the portfolio shall include examples of the student's work and may include self-assessments by the student.

c. The parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement who has a physical or mental disability so significant that the results of a standardized test would be meaningless for assessment purposes may request the department's approval of an alternative evaluation.

31.8(4) *Report card from accredited correspondence school.* For a child subject to annual assessment who is enrolled as a student of a correspondence school that is a member of a national or regional accrediting association recognized by the United States Secretary of Education and accredited for elementary and secondary education, the district of residence and the department shall accept the annual report of progress (report card) sent by the correspondence school to the child's parent, guardian, or legal or actual custodian, if the annual report of progress includes a listing of subjects taken and grades received. A passing grade in all content areas for which annual assessment is required shall be deemed evidence of adequate progress for the purpose of annual assessment.

Item 13. Amend renumbered rule **281—31.9(299A)** as follows:

281—31.9(299A) Reporting assessment results.

31.9(1) *Baseline ~~tests~~ evaluations.* The baseline ~~test~~ evaluation results of each child subject to the baseline ~~test~~ evaluation requirement of Iowa Code section 299B.4 and subrule 31.7(1) shall be reported by the ~~test administrator~~ child's parent, guardian, or legal or actual custodian to the school district of residence of the child ~~and to the department of education~~ by June 30 of the year in which the ~~test~~ evaluation was taken.

The baseline ~~test~~ evaluation shall serve only as data from which subsequent progress shall be measured; the baseline ~~test~~ evaluation alone is not an indication of educational progress or a lack of progress.

31.9(2) *Standardized tests.* The results of a standardized test taken by a child subject to the annual assessment requirements shall be reported by the ~~test administrator~~ child's parent, guardian, or legal or actual custodian to the district of residence of the child ~~and to the department of education~~ by June 30 of the year in which the test was taken. ~~The results shall be submitted in original form as received from the agency responsible for scoring the test. The results shall be submitted either in original form or as a true and correct photocopy of the original form as received from the agency responsible for scoring the test, from which any test results not required under law may be redacted.~~

31.9(3) *Portfolio assessments.* The ~~assessment~~ results of an assessment of a child's educational portfolio made by a qualified Iowa licensed practitioner ~~or practitioners~~ shall be submitted by the portfolio ~~evaluator(s)~~ evaluator to the child's parent, guardian, or legal or actual custodian, who shall send a copy to the district of residence of the child, and the department of education by June 30 of the year in which the assessment was done.

The report ~~shall~~ may be in narrative form and shall include assessments of the child's achievement and progress in the curriculum areas including reading, language arts, and mathematics for children whose grade level of study is fifth grade and below, and those subjects plus the additional areas of science and social studies for students whose grade level of study is sixth grade and above. The report shall include a statement as to whether the child has demonstrated adequate progress in each of the areas of study ~~for which the portfolio evaluator is qualified to provide an assessment.~~ The report shall be signed by ~~each~~ the evaluator.

31.9(4) *Report card from accredited correspondence school.* Report cards from an accredited correspondence school shall be submitted by the child's parent, guardian, or legal or

actual custodian to the child's district of residence by June 30 of the year in which the report cards were issued by the accredited correspondence school.

31.9(5) Confidentiality of annual assessments. The district shall maintain as any other confidential education record the standardized testing, portfolio evaluation, and report cards from an accredited correspondence school for each resident child subject to annual assessment.

Item 14. Amend renumbered rule **281—31.10(299A)** as follows:

281—31.10(299A) Special education students. When a child has been identified as currently requiring special education, the child is eligible to receive competent private instruction with the written approval of the director of special education of the area education agency of the child's district of residence.

The director of special education of each area education agency shall issue a written decision, approving provision of competent private instruction, conditioning approval on modification of the proposed program, or denying approval, based upon the appropriateness of the proposed competent private instruction program for the child requiring special education, considering the child's individual disability. Pursuant to 34 CFR Section 300.300, the parent, guardian, or legal or actual custodian of a child with a disability is not required to seek approval from the area education agency to provide competent private instruction for the child if the parent, guardian, or legal or actual custodian does not consent to initial evaluation or to reevaluation of the child for receipt of special education services or programs.

The request for approval for placement under competent private instruction by the parent or guardian may be presented to the special education director at any time during the calendar year. If the special education director denies approval or if no written decision has been rendered within 30 calendar days, that decision or the absence thereof is subject to review by an impartial administrative law judge under provisions of 20 U.S.C. Section 1401 et seq., federal regulations adopted thereunder, and Iowa Code section 256B.6 and rules adopted thereunder found at ~~281—41.112(17A,256B,290) et seq~~ 281—41.500(256B,34CFR 300) et seq.

If a parent, guardian, or legal or actual custodian of a child requiring special education provides private instruction without the approval of the director of special education, the director may either request an impartial hearing before an administrative law judge under the rules of special education, ~~281—41.112(17A,256B,290)~~ 281—41.500(256B,34 CFR 300) et seq., or notify the secretary of the child's district of residence for referral of the matter to the county attorney pursuant to Iowa Code section 256B.6, incorporating chapter 299.

A program of competent private instruction provided to a student requiring special education is not a program of special education for purposes of federal and state law.

The director of special education shall advise the parent, guardian, or legal or actual custodian of a child requiring special education of the probable consequences of placing the child under private instruction and withdrawing the child from specialized instruction and services to which the child is entitled. The director of special education may require the parent, guardian, or legal or actual custodian of a child requiring special education to accept full responsibility for the parent's, guardian's or legal or actual custodian's decision to reject special education programs and services, forgoing a later request for compensatory education for the period of time when the child was under private instruction.

Item 15. Amend **281—Chapter 31**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 299 and 299A and 2008 Iowa Acts, House File 2700, sections 108 to 111.